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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679-5356-02]

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Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Reef Fish Fishery of the Gulf of Mexico; Amendment 40

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule contains measures to establish two components within the recreational sector for Gulf of Mexico (Gulf) red snapper (a Federal charter vessel/headboat (for-hire) component and private angling component) with a 3-year sunset provision; allocate the red snapper recreational quota and annual catch target (ACT) between the components; and establish separate red snapper

season closure provisions for the two components. The purpose of Amendment 40 and this rule is to provide a basis for increased flexibility in future management of the recreational sector, and reduce the likelihood of recreational quota overruns, which could negatively impact the rebuilding of the red snapper stock.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 40, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am40/index.html.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-824-5305; email: *Peter.Hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On January 16, 2015, NMFS published a notice of availability for Amendment 40 and requested public comment (80 FR 2379). On January 23, 2015, NMFS published a proposed rule

for Amendment 40 and requested public comment (80 FR 3541). NMFS approved Amendment 40 on April 10, 2015. The proposed rule and Amendment 40 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 40 and this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule establishes two components in the Gulf red snapper recreational sector: a Federal for-hire component and a private angling component. In addition, this rule establishes a Federal for-hire quota and a private angling quota based on the component allocation of the recreational quota, component ACTs, and seasonal closure provisions for the two components. These management measures will be in effect for 3 years, unless changed by subsequent Council action.

Establishing Private Angling and Federal For-hire Components

This final rule establishes a Federal for-hire component and a private angling component for the Gulf red snapper recreational sector. The Federal for-hire component includes operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish and the private angling component includes anglers fishing from private vessels and state-permitted for-hire vessels.

Component Quotas

This final rule establishes component quotas based on the allocation of 42.3 percent for the Federal for-hire component and 57.7 percent for the private angling component, as selected in Amendment 40. All weights given in this rule are in round weight. Currently, the 2015 recreational quota is set at 5.390 million lb (2.445 million kg). Therefore, this final rule sets the Federal for-hire component quota at 2,279,970 lb (1,034,177 kg), and the private angling component quota at 3,110,030 lb (1,410,686 kg), for the 2015 fishing year.

However, the Council has developed a framework action to revise the commercial and recreational quotas for the 2015, 2016, and 2017 fishing years and subsequent fishing years for red snapper based on new acceptable biological catches (ABCs) recommended by the Council's Scientific and Statistical Committee (SSC) and on the current commercial and recreational allocations (51-percent commercial and 49-percent recreational). A proposed rule for the framework action was published on April 1, 2015 (80 FR 17380). If the framework action is approved, a final rule containing revised component quotas would be published and effective prior to the June 1, 2015, start date of the Federal fishing season.

Recreational Season Closure Provisions

This final rule establishes separate red snapper seasonal

closure provisions for the Federal for-hire and private angling components based on each component's ACT. Each component's season will begin on June 1 and the season length will be projected from each component's ACT. The ACTs are reduced from each component's quota by 20 percent.

Given the current component quotas, the Federal charter vessel/headboat component ACT will be 1.824 million lb (0.827 million kg), and the private angling ACT will be 2.488 million lb (1.129 million kg). However, if the final rule for the 2015 Gulf red snapper framework action is implemented the component ACTs for the 2015, 2016, and 2017 and subsequent fishing years will be revised.

The 2015 season lengths will be announced prior to the June 1 Federal fishing season start date; most likely in the final rule for the 2015 Gulf red snapper framework action.

Sunset Provision

This rule implements a 3-year sunset provision for the establishment of the Federal for-hire and private angling components and associated management measures. The components and associated management measures will be effective through the end of the 2017 fishing year, on December 31, 2017. For these components and management measures to extend beyond 3 years, the Council would need to take further action.

ACLs and AMs

Prior to Amendment 40, rather than establishing ACLs for red snapper management, the Council chose to refer to the sector quotas as the functional equivalent to sector ACLs, and the sum of all quotas as the stock ACLs. This led to confusion when discussing and implementing red snapper catch levels. In the preamble to the proposed rule for Amendment 40, NMFS failed to explain that this rule would add sector ACLs and an AM for the commercial sector to the regulations. However, the proposed rule's regulatory text, and the discussion in Amendment 40, did include sector ACLs. Consistent with what was proposed, this final rule adds commercial and recreational ACLs, which are equivalent to the commercial and recreational quotas, respectively, and adds language explaining that the commercial AM is defined as the IFQ program for red snapper.

Changes from the Proposed Rule

A recent framework action (80 FR 14328) implemented a post-season AM for the recreational sector as a whole. This AM requires that NMFS adjust the subsequent year's total recreational quota and ACT if the quota is exceeded in the prior fishing year and red snapper are classified as overfished. The proposed rule for Amendment 40 included the provision for adjusting the total recreational quota and the component ACTs,

but not the provision for adjusting the component quotas. If an overage of the total recreational ACL (equal to the total recreational quota) occurs, the component quotas must be adjusted to reflect the adjustment to the total quota, otherwise the combined component quotas would exceed the total quota. The adjusted component quotas are also necessary to calculate the reduced component ACTs. NMFS has determined the provision for adjusting component quotas was reasonably foreseeable from what was included in the proposed rule, and is a logical outgrowth of the proposed rule because it is necessary to implement the AM as proposed. Therefore, this final rule adds the necessary language for reducing the component quotas to § 622.41(q)(2)(ii).

Comments and Responses

A total of 18,353 comments were received on Amendment 40 and the proposed rule, including comments from individuals, 2 state agencies, 4 non-governmental organizations (NGOs), 6 fishing associations, 1 U.S. Congressman, and 1 U.S. Senator. NMFS received 3,212 comments in opposition to Amendment 40 or the proposed rule, of which 1,806 comments were letters attached to a submission from a recreational fishing organization. There were 15,089 comments in support of Amendment 40 and the proposed rule, of which 15,025 comments were copies of emails submitted by members of an NGO, which submitted them to NMFS. There were

52 commenters who did not indicate whether they supported or were in opposition to the amendment. In addition to these comments, a minority report was submitted by the 7 members of the Council who voted against approval of Amendment 40.

Comments opposing the action include: there is a lack of significant support for the action; the action disproportionately harms private anglers by reducing their Federal season; the action privatizes the resource; all anglers should be treated alike; the Council lacked certain information before making its decision; the action does little to improve recreational management; and the action violates National Standards 2, 4, 5, 8, and 10. In addition, commenters suggested several Council members had a conflict of interest and should not have voted for approval of Amendment 40.

Comments in support of the action include that the action will: give better access to red snapper fishing by non-boat-owning anglers; provide management flexibility; increase recreational accountability; and help to stabilize the for-hire component. NMFS also received comments that addressed issues outside the scope of this action. Comments in this category include: asking for different red snapper size and bag limits, weekend-only red snapper seasons, and a tagging system to allocate fish; halting the removal of oil rigs; and opposing

creation of a catch share-like program for the for-hire component. Although these measures could be developed for one or both components as a result of Amendment 40, Amendment 40 does not specifically address these topics. Specific comments related to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

Comment 1: Amendment 40 disproportionately harms private anglers by reducing the length of their Federal season.

Response: NMFS disagrees that Amendment 40 disproportionately harms private anglers. NMFS recognizes that the Federal season for private anglers is likely to be shorter than the Federal fishing season for the federally permitted for-hire vessels. However, this is a result of the unlimited number of private recreational vessels and state-permitted for-hire vessels, increasing fish size, and the decisions by the Gulf states to extend their red snapper fishing seasons in state waters beyond the Federal fishing season. As explained in Amendment 40, the number of private recreational vessels has increased over time and the moratorium on Federal for-hire permits has limited growth in the for-hire industry and, in turn, anglers' access to these vessels. In addition, last year, all the Gulf states extended their red snapper fishing seasons beyond the Federal fishing season, and some states extended

their fishing seasons in previous years. Private anglers and state-permitted vessel operators are able to harvest red snapper outside of the Federal season as long as the fish are caught in state waters during the extended state fishing seasons. On the other hand, fishermen fishing from federally permitted reef fish for-hire vessels are prohibited from harvesting red snapper caught in state waters when the Federal fishing season is closed, but state waters are open. Therefore, fishermen fishing from private and state-permitted vessels have seen increased fishing opportunities in recent years, whereas, fishermen fishing from federally-permitted for-hire vessels have seen their Federal fishing season reduced under current conditions. While the Federal for-hire component fishing season will be longer than the Federal private angling component fishing season, the private angling component is expected to have additional fishing opportunities in state waters.

Comment 2: Amendment 40 complicates management by creating a different set of rules for each component that must fish under the same recreational quota. All recreational anglers, whether they are fishing from their own boat or from a federally permitted for-hire vessel, should be treated alike and have the same size limit, bag limit, and season.

Response: The overall management program may be slightly more complex as modified by Amendment 40, however NMFS disagrees that Amendment 40 complicates management. For both recreational components, the Federal bag and size limits and the start date of the Federal fishing season (June 1) are the same. The only difference is that the end date of the fishing season for the respective components will be different. The projections of the season length provided in Amendment 40 show the Federal for-hire component to have a longer fishing season than the private angling component, in part, due to red snapper harvested in state waters during extended state fishing seasons. Differences in catch rates, size of fish, and total effort also contribute to season-length differences.

The Council may determine that other component-specific management measures are needed to improve the management of the recreational sector fishing for red snapper. Any new management measures would be developed through a framework action or plan amendment and would require public participation.

Comment 3: Amendment 40 does little or nothing to improve accountability and the collection of data. Although the amendment identifies factors that contribute to quota overruns, it does not identify how the proposed action will do anything to minimize quota overruns.

Response: The purpose of Amendment 40 is not to improve data collection. However, Amendment 40 may facilitate greater certainty in data collected by establishing distinct private angling and Federal for-hire components of the red snapper recreational sector in the Gulf, which will provide a basis for flexible management approaches tailored to each component. NMFS disagrees that this amendment does little or nothing to improve accountability. The landings data for each component have different degrees of uncertainty because of differences in how recreational data are collected. Private angler data are derived from surveys whereas for-hire data are collected through surveys and logbooks. In addition, the number of for-hire vessels is known and is much smaller than vessels operated by private anglers. When private recreational landings estimates, that have a higher degree of uncertainty, are combined with for-hire landings data, projecting when the season should close is more difficult, and less effective management measures may result for the recreational sector. The analysis in Amendment 40 explains that because it is easier to both monitor and project landings for the for-hire component, it is easier to ensure that this component will not exceed its quota. Thus, separating management of the components is expected to improve the projections of when the recreational quota is reached and create a platform for

future management of the recreational sector that can focus on maximizing opportunities for each component.

Comment 4: Amendment 40 violates National Standard 2 because the Council did not have the best scientific information available when making its decision. The final allocation percentages, which were dependent on recalibrated landings from a Marine Recreational Information Program (MRIP) workshop, were not available when the Council made its final decision. Thus, the Council did not have a clear idea of what the social and economic impacts would be from the final allocations set in Amendment 40. In addition, there was no attempt to quantify the economic consequences to the Federal for-hire component or the recreational sector as a whole.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 2 and that the Council did not have a clear idea of the social and economic impacts that would result from the final allocations. National Standard 2 states that conservation and management measures shall be based on the best scientific information available. At the time the Council took final action on Amendment 40, the document contained a complete analysis of the social and economic impacts of establishing separate recreational components and the allocation alternatives. As discussed in Amendment 40 and the proposed

rule, a quantitative economic analysis could not be conducted because the information required for such an analysis is not available. Instead, a qualitative analysis based on the best scientific information available was provided. This analysis acknowledged that the allocation would result in decreased harvest and associated economic benefits to anglers in the private component compared to recent years, and increased harvest and associated economic benefits for the Federal for-hire component. The analysis also indicated, however, that in the long term, total economic benefits would be expected to increase due to the enhanced quota monitoring capability and ability to better tailor management, through subsequent rulemaking, to the needs of each component.

To ensure that the Council's allocation decision was based on the best scientific information available, the preliminary results of the MRIP workshop were presented to the Council at its October 2014 meeting and the Council was advised that the preferred allocation could change by as much as ± 3.3 percent. The methods used to calibrate the MRIP landings were reviewed earlier in October 2014 by the Council's SSC. The SSC did not note any concerns about the methodology. When the final results from the workshop were incorporated in Amendment 40, 1.7 percent of the recreational quota was shifted from the Federal for-hire

component to the private angling component. This change in allocation did not change the season length projections for the two components that were included in Amendment 40 at the time the Council took final action. In a memorandum dated January 7, 2015, the Southeast Fisheries Science Center certified that the actions in Amendment 40 are based on the best scientific information available.

Comment 5: Amendment 40 violates National Standard 4 because sector separation will have disparate impacts on residents from different states, particularly given different states have differing proportions of for-hire and private angling fishers.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 4. National Standard 4 states, in part, that conservation and management measures shall not discriminate between residents of different states and that if allocation is assigned, it is fair and equitable to all fishermen, and reasonably calculated to promote conservation.

Amendment 40 may have different impacts on the residents of different states because of the proportion of fishers using federally permitted for-hire vessels and private vessels varies regionally. In addition, as explained in the proposed rule, because red snapper availability and abundance in state waters

can vary regionally, fishing opportunities for individual fishermen in the private-angling component may vary if the Gulf States set state seasons inconsistent with one another. However, the actions in Amendment 40 do not differentiate between residents of different states. For the private-angling component, there will be a single Federal season in the exclusive economic zone (EEZ) off all Gulf states that will be determined using past landings data and will take into account any harvest allowed in state waters.

The National Standard 4 Guidelines state that "conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4." 50 CFR 600.325(b). NMFS has determined that Amendment 40 is reasonably calculated to promote conservation and that the allocation is fair and equitable. Amendment 40 is reasonably calculated to promote conservation because it will provide a basis for increased flexibility in future management of the recreational sector, it will reduce the likelihood of recreational quota overruns, and is likely to have positive indirect effects on discard mortality as compared to the status quo. With respect to the allocation of the recreational quota between the private angling and for-hire components, a detailed discussion of the basis for the Council's

decision is discussed in the amendment and proposed rule. NMFS has determined that the allocation is fair and equitable because it reflects both historical changes in the recreational sector as well as current conditions, and is expected to increase the total benefits to the recreational sector.

Comment 6: Amendment 40 violates National Standard 5 because it only establishes an economic sub-allocation of a quota. Thus economic allocation is the sole purpose of the action.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 5. National Standard 5 requires that conservation and management measures, where practicable, shall consider efficiency in the utilization of fishery resources, except no such measure shall have economic allocation as its sole purpose. As stated in the proposed rule and in the response to Comment 5, the purpose of Amendment 40 is to improve management of the recreational sector and increase both biological and economic benefits. Amendment 40 will allow the development and implementation of management measures better tailored to the specific needs of the separate components; improve quota monitoring; and reduce bycatch and associated discard mortality compared to the status quo. Thus, NMFS has determined that Amendment 40 and this final rule are consistent

with National Standard 5.

Comment 7: Amendment 40 violates National Standard 8 because, without having sufficient information, particularly quantitative information of the economic impacts to the Federal for-hire component, the Council could not effectively evaluate the effects of the allocations. For example, no discussion of the impact of the longer season for the Federal for-hire component relative to the shorter season for the private angler component was provided. In addition, Amendment 40 does not take into account the importance of fishery resources to fishing communities dependent on private anglers who target red snapper. Nor does it provide for the sustained participation or minimize adverse economic impacts on these communities.

Response: NMFS disagrees that Amendment 40 is inconsistent with National Standard 8. National Standard 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by utilizing economic and social data consistent with National Standard 2 in order to provide for the sustained participation of such communities and, to the extent practicable, to minimize adverse economic impacts on such communities. As discussed in the response to Comment 4, a quantitative economic analysis was not provided in Amendment 40 because the information required

for such an analysis is not available. However, Amendment 40 includes a qualitative economic analysis based on the best scientific information available, which concludes that, overall, greater percentages allocated to the Federal for-hire component would correspond to increasing economic benefits to the Federal for-hire component and decreasing benefits to the private angling component.

Amendment 40 does not include an analysis of the impacts of season length because the season length depends on a number of factors in addition to each component's allocation. As explained in Amendment 40, even under the status quo alternative (a single recreational quota), the length of the 2015 recreational red snapper season could not be projected at the time the Council took final action because final 2014 harvest information and the results of a 2014 red snapper update assessment were not available. However, Amendment 40 did provide estimated season lengths for each allocation alternative if sector separation was implemented for the 2014 fishing season, and as explained below, did consider fishing communities, which generally service recreational anglers fishing from all fishing modes.

With respect to impacts on fishing communities, the National Standard 8 Guidelines define a fishing community as place-based, such that members of the community "reside in a

specific location" 50 CFR 600.345(b)(3). As explained above, Amendment 40 includes an extensive economic analysis. Amendment 40 also includes an extensive qualitative social analysis including identifying the communities where most fishing activity takes place. These analyses are based on the best scientific information available.

Amendment 40 provides a ranked list of fishing communities most reliant on recreational fishing, generally, as recreational landings of red snapper are not available at the community level. Recreational fishing infrastructure, such as marinas and tackle shops, are used by recreational anglers fishing from all fishing modes, including charter vessels, headboats, and private vessels. The resulting communities are all "general" recreational fishing communities and not disaggregated as private angling communities or for-hire communities. Generally, communities that service one component would be expected to service the other, such that distinct private angling communities and for-hire communities do not exist. However, there are more private recreational fishing vessels, there are more departure sites for these vessels, and there are no minimum geographic or population size requirements to define a community. Thus, there are likely some small and/or isolated locations that may only cater to private anglers. In general,

however, NMFS expects that most communities with substantial amounts of recreational fishing infrastructure and services cater to both components.

The National Standard 8 Guidelines define "sustained participation" as "continued access to the fishery within the constraints of the condition of the resource" 50 CFR 600.345(b)(4). To the extent there may be some small or isolated locations that cater only to private anglers who target red snapper, based on historical participation, these communities' sustained participation is secured by the 57.7 percent of the quota allocated to that component.

Concerning the requirement to minimize adverse economic impacts on communities, as described above, communities from which for-hire vessels and private angling vessels depart overlap. Thus, NMFS does not expect there to be distinct Federal for-hire communities and private angling communities that will experience different effects from this action. Further, fishermen in both recreational components also target other species, including other reef fish, in addition to red snapper. Fishing trips for these species would be unaffected by this action and the associated economic benefits from these trips would continue to support these coastal communities. Although some anglers may only fish for red snapper, the continued

viability of these communities, despite the brevity of the red snapper recreational fishing season in recent years, demonstrates the diversity and resilience of the recreational fishing industry and the general absence of reliance on individual species at the community level.

Comment 8: Amendment 40 violates National Standard 10 because it would create a derby for private anglers, which will likely result in crowded boat ramps, waterways, and artificial reefs, as well as negatively affect law enforcement's ability to effectively monitor catches.

Response: NMFS disagrees Amendment 40 violates National Standard 10. NMFS has determined that Amendment 40 and the final rule are consistent with National Standard 10, which requires that conservation and management measures, to the extent practicable, promote the safety of human life at sea. As noted in the proposed rule, a shorter Federal fishing season for the private-angling component will likely be offset by extended state fishing seasons. This will reduce both the incentive to fish in the EEZ if unsafe fishing conditions exist during the open season and the likelihood that boat ramps, waterways, and artificial reefs will be crowded to the point of creating a safety concern or impeding the ability of law enforcement to effectively monitor catches. In addition, private anglers do not

have an economic incentive, compared to commercial fishermen who earn their living fishing, to fish in unsafe conditions. Thus, NMFS has determined that it is unlikely that private anglers will attempt to fish for red snapper in Federal waters in hazardous weather conditions.

Comment 9: Given other actions the Gulf Council is working on, it is unclear how sector separation will improve red snapper management.

Response: The purpose and need statement for Amendment 40 explains that "Establishing separate components within the recreational sector would provide a basis for flexible management approaches tailored to each component and reduce the likelihood for recreational quota overruns which could jeopardize the rebuilding of the red snapper stock." Currently, the Council is working on amendments that consider regional management, options for private anglers such as tags and slot limits, and the development of for-hire allocation-based programs. By separating the recreational sector into the two components and establishing component quotas, the Council now has the flexibility to focus on maximizing opportunities for each component independently. For example, regional management would allow Gulf states or sub-regions of the Gulf to be managed differently so long as the proposed regional management measures

are not projected to exceed the regional quota allocation. With two components, the Council has greater flexibility in how it manages each.

Comment 10: No actions should be applied to the recreational sector until there are better data to determine red snapper recreational harvest.

Response: NMFS disagrees that no recreational red snapper management measures should be developed until some unspecified time in the future. National Standard 2 requires that management measures be based on the best scientific information available. Consistent with this requirement, NMFS currently determines red snapper harvest based on harvest information obtained from an MRIP-based private angler/charter survey; the Southeast Region Headboat Survey; the Louisiana Department of Wildlife and Fisheries (LDWF) creel survey; and the Texas Parks and Wildlife Department (TPWD) creel survey. NMFS agrees there are opportunities to improve the data collection process and is collaborating with many of the Gulf States' marine fisheries resource agencies to make improvements in both data collection and analysis. Any improvements will be incorporated into future management decisions and season projections.

Comment 11: Amendment 40 violates the Magnuson-Stevens Act because the fish belong to the recreational sector as a whole.

The Magnuson-Stevens Act does not provide the authority for the Council to divide the recreational quota between the Federal for-hire and private-angling components. For this same reason, approval of Amendment 40 would violate the Administrative Procedure Act.

Response: NMFS disagrees that Amendment 40 violates the Magnuson-Stevens Act by separating the recreational sector into two components. As discussed in the proposed rule, Section 407(d) of the Magnuson-Stevens Act requires separate quotas for commercial and recreational fishing (which, for the purposes of the subsection includes for-hire fishing), and a prohibition on the retention of fish when each quota is reached. The Magnuson-Stevens Act does not prohibit the Council from further subdividing the recreational quota among different components of the recreational sector to improve the management of the fishery, and the approach of subdividing a quota has been used repeatedly by fishery management councils nationwide as consistent with the authority provided in the Act. See e.g., 16 U.S.C. 1853(b)(3)(A) (allowing the councils to establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--''(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors)'').

The one constraint on managing the two components of the recreational sector independently, per section 407(d) of the Magnuson-Stevens Act, is the mandate to prohibit the retention of red snapper when the recreational red snapper quota is reached. Consistent with this requirement, this rule does not change the fact that there is a total recreational quota or the requirement that the recreational sector be closed when that total quota is reached. Thus, if NMFS determines that the Gulf-wide recreational quota has been met, all recreational harvest of red snapper in the EEZ will be prohibited regardless of whether one component has remaining allocation. However, the use of an ACT to set the component season lengths will reduce the likelihood of this occurring.

Comment 12: NMFS should disapprove Amendment 40 because several Council members should not have voted to submit the amendment for implementation. These include two members who have charter for-hire vessels and so have a conflict of interest (*i.e.*, the amendment would directly benefit them). Three other Council members are members of a commercial fishing lobbying-group and failed to list this activity on their financial disclosure forms.

Response: NMFS disagrees. First, Council members appointed by the Secretary "must be individuals who, by reason of their

occupational or other experience, scientific expertise or training, are knowledgeable” about the relevant fishery resources, and often are individuals who are engaged in the fishing industry. Consequently, the MSA provides that a conflict of interest alone does not disqualify a Council member from voting on a Council decision. Section 302(j)(7) of the Magnuson-Stevens Act and the regulations at 50 CFR 600.235(c), prohibit a Council member from voting on a Council decision only in specific circumstances, and there is no indication that any Council member had a financial interest that met the criteria for mandatory recusal. Second, under section 302(j)(6) of the Magnuson-Stevens Act, the participation of a Council member in an action by the Council during any time in which the Council member is not in compliance with the financial disclosure regulations is not a basis for invalidating that action.

Comment 13: Amendment 40 does not differentiate between commercial and recreational sustenance fishing and should take into account the families of these fishermen who they need to feed.

Response: It is unclear whether the commenter meant sustenance or subsistence fishing. Sustenance refers to the consumption of what is harvested, whereas subsistence is a

circumstance under which the harvest of fish, or other foodstuff, is required to meet the minimum dietary requirements necessary for living and other more cost-effective means to meet these needs are not available. The two terms are not equivalent and simply eating what one catches does not qualify as subsistence. Amendment 40 would not prevent either recreational or commercial fishermen from harvesting and consuming red snapper as long as they follow current regulations. Amendment 40 discusses subsistence and explains that there are no known claims for subsistence consumption of Gulf red snapper by any population including tribes or indigenous groups. This rule pertains to the harvest of red snapper in the EEZ, which would require a boat capable of safely travelling 3-9 miles (5-14 km) offshore, depending on its departure location, and associated high fuel and gear costs. As a result, the costs associated with the harvest of red snapper are inconsistent with the concept of subsistence fishing because alternative foods, as well as fresh fish, including red snapper, could be purchased more cheaply than the cost of a fishing trip. Thus, it is unlikely that there would be any concerns associated with subsistence fishing resulting from the actions in this amendment.

Comment 14: Amendment 40 could force anglers to use for-hire services if they want to harvest red snapper and will cause

prices for for-hire trips to increase as a few people will be able to control prices.

Response: NMFS disagrees that Amendment 40 forces anglers to use for-hire services if they want to harvest red snapper and that this will cause price increase. Anglers in the private component would only have to use for-hire services if they choose to fish in Federal waters when the season for the private component is closed. These anglers could continue to fish in open state waters during the extended state fishing seasons, without using for-hire services. For those anglers who choose to use for-hire services to fish in Federal waters, there is sufficient capacity in the for-hire fleet to prevent price control. As stated in Amendment 40, there are an estimated 1,269 charter vessels and 67 headboats operating in the Gulf with charter/headboat reef fish permits. The average number of red snapper target trips in the charter mode is approximately 54,000 trips, or approximately 40 angler trips per charter vessel. Assuming 6 anglers per trip, the average number of vessel trips per charter vessel would be approximately 7 trips, equivalent to 7 days if full-day trips are taken, or fewer than 7 days if some trips are half-day trips. Similar information is not available for headboats because target information is not collected for these vessels. Although all of the charter vessels may not

operate in areas where red snapper is available, these results show there is ample capacity to increase the number of for-hire trips without substantial price changes.

Comment 15: The analysis in Amendment 40 underestimates the expected economic impacts on private anglers and associated businesses and communities. Private anglers contribute more to the local economy than commercial fishing operations.

Response: NMFS disagrees. As discussed in Amendment 40, anglers in the private angling component would be expected to experience decreased harvests and associated economic benefits compared to recent years, if their harvest is sufficiently constrained by state regulations, because their sub-quota would be less than the portion of the red snapper recreational quota they have harvested in recent years. In the long term, however, the total economic benefits to the private angling component and the recreational sector as a whole would be expected to increase due to the enhanced quota monitoring capability and ability to better tailor management, through subsequent rulemaking, to the needs of each component. Quantitative estimates of the short- or long-term economic impacts were not provided because of the lack of appropriate data. Although the amount of allowable harvest by the private angling component would be reduced, these anglers would retain the ability to fish for other species in Federal

and state waters. It is unknown, however, how many anglers may continue to fish but target other species, how many may cease to fish, or the appropriate economic values to assign to these anglers. Additionally, even though the private angling component quota will be less than recent harvests, if state regulations are ineffective in adequately restraining red snapper harvest, the total red snapper harvest and associated economic benefits accruing to the private angling component may be largely unaffected, resulting in shortening of the Federal for-hire season because of the quota closure requirements. Nevertheless, if effort is reduced, the economic benefits accruing to the private angling component would be reduced.

With respect to the comment that private anglers contribute more to the local economy than commercial fishing operations, because the provision of for-hire services is a commercial activity, NMFS assumes that the commenter was referring to for-hire businesses and not the commercial reef fish sector (otherwise the comment is beyond the scope of this rule, as Amendment 40 does not affect the commercial sector). Although the percent distributions were not provided, the information shown in Amendment 40 demonstrates that charter fishing produces more business activity per trip than private angling. Although red snapper target effort by anglers fishing on charter vessels

typically comprises less than 20 percent in Louisiana through Florida (comparable information on Texas is not available) of total red snapper target effort, with the exception of Mississippi, which has minimal charter vessel activity compared to the other Gulf states, the business activity associated with these trips ranges from approximately 54 percent to 67 percent. Anglers fishing on charter vessels spend, on average, more per trip than private anglers. Although these estimates may include anglers that fish on charter vessels and target red snapper in state waters, this activity is expected to be minimal compared to anglers fishing on charter vessels in Federal waters. Thus, the per trip contribution of charter vessel anglers to business activity in local communities exceeds that of private anglers. Similar information is not available for headboats. Because there are more private angler vessels and suitable launch sites for private angler vessels than there are for for-hire vessels, there may be isolated areas where the for-hire presence is limited compared to private angling. However, generally, areas with substantial amounts of private angling activity also support for-hire businesses. Thus, although there will be areas with no access to for-hire services and it is possible to define a community as an area so small that for-hire activity is excluded, generally, it is expected that the areas that provide

private angling services also provide for-hire angling services. As a result, areas that may experience changes in fishing by private anglers may benefit from changes in fishing by for-hire anglers.

Comment 16: NMFS withheld a decision tool that contained information that was vital for the Council to make an informed decision on Amendment 40.

Response: No information vital to the Council decision was withheld. The "decision tool" referred to in the comment was merely an Excel spreadsheet developed by NMFS staff at the request of a single for-hire fisherman, and was not related to Amendment 40 or allocating quota between the for-hire component and private angling component. Rather, the spreadsheet as the fisherman requested, allowed him to calculate various quota percentages for use in discussing hypothetical individual fishing quota (IFQ) allocations for a hypothetical charter vessel IFQ program.

Comment 17: After any red snapper recreational quota overage, the ACT should be reset using the Council's ACL/ACT control rule.

Response: NMFS disagrees that the component ACT should be reset using the ACL/ACT control rule after a recreational quota overage. The ACT is not intended to address quota overages. The

ACT is used to account for management uncertainty in setting the recreational fishing season and is intended to help ensure that the quota is not exceeded. If a quota overage occurs, the accountability measure's payback provision, which reduces the quota by the amount of the overage and sets the ACT at 20-percent less than the adjusted quota, mitigates for that excess harvest. Keeping a consistent buffer of 20 percent between the quota and ACT provides for more stable management of the recreational sector. If new information indicates that a 20-percent buffer may no longer be appropriate, the Council may consider revising the ACT in the future. The ACL/ACT control rule could be used to determine one alternative for an appropriate buffer. The Council may also consider other reasonable alternatives before deciding whether to adjust the ACT.

Comment 18: The use of "historic" harvest information that is more than 30 years old in setting the allocation is not reflective of the current make-up of the recreational sector or how communities in the Gulf have grown and changed to accommodate the expansion of the private recreational component. More recent information including MRIP and state marine resource agency harvest data should be used to set the allocation.

Response: The Council, in evaluating different allocation alternatives, did consider some alternatives based solely on more recent years. However, the Council determined the allocations based only on these limited time series did not capture changes that have occurred in the fishery, such as changes in regulations and disruptive events such as hurricanes and oil spills that have affected how recreational fishing is prosecuted. At the same time, the Council also recognized the importance of including more recent landings information to reflect current conditions in recreational red snapper fishing. Therefore, the Council determined, and NMFS agrees, that a fair and equitable allocation resulted by using both historic harvest information (1986-2013) and more recent harvest information (2006-2013). This is an approach used by the Council in setting allocations for other species (e.g., the jurisdictional apportionment of black grouper and yellowtail snapper resources between the Gulf and South Atlantic Councils).

Comment 19: Amendment 40 fails to include any instructions for how the quotas for the private and charter vessel/headboat components will be managed, but assumes there will be separate harvest accounting measures for each component.

Response: As stated in the response to Comment 2, red snapper management for the for-hire and private angling

components will be managed with a 2-fish bag limit, 16-inch (40.6 cm), total length, minimum size limit, and a June 1 season opening and the season for each component will be projected based on each component's ACT. However, these measures may change in the future as the Council explores flexible management approaches tailored to each component. The component ACTs, which are 20-percent reductions from the component quotas, serve as in-season AMS designed to reduce the likelihood of a component exceeding its component quota. If the total recreational ACL is exceeded in a fishing year and red snapper are classified as overfished, NMFS will adjust the applicable recreational component quota(s) and ACT(s) the following fishing year, based on the overage on the total recreational quota. As has been done in the past, harvest information to compare landings to the quotas for each component will be obtained from an MRIP-based private angler/charter survey and the LDWF and the TPWD creel surveys. Additional information for the for-hire component will come from the Southeast Region Headboat Survey. These harvest information programs are likely to change as NMFS, collaborating with its state partners, work to make improvements in both data collection and analysis.

Comment 20: No portion of the recreational quota should be privatized.

Response: Amendment 40 does not privatize any portion of the red snapper recreational quota. The actions in the amendment do four things: split the recreational sector that fishes for red snapper into a private angler and a Federal for-hire component; sunsets the components after 3 years; provides an allocation of the recreational red snapper quota to each of the components; and revises the recreational red snapper AMs to account for the two components.

Comment 21: Amendment 40 does not contain a full fishery impact statement (FIS) that takes into consideration the effects of the proposed actions on all entities involved.

Response: The Magnuson-Stevens Act requires that an FIS be prepared for all fishery management plans and amendments prepared by or submitted to the Secretary after October 1, 1990. The FIS assesses, specifies, and analyzes the likely effects, if any, including the cumulative conservation, economic, and social impacts of the conservation and management measures on fishery participants and their communities, participants in the fisheries conducted in adjacent areas under the authority of another Fishery Management Council, and the safety of human life at sea. Amendment 40, as submitted by the Council, contains a full FIS that describes the effects of the action on fishery participants and their communities, participants in the

fisheries conducted in adjacent areas, and the safety of human life at sea. These effects are fully analyzed based on the best scientific information available (per National Standard 2). The FIS focuses on the effects of the preferred alternatives, which are the management measures submitted for implementation and approval. Amendment 40 contains additional analysis that addresses both the impacts of the preferred alternatives as well as those alternatives that were not selected for implementation.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with Amendment 40, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the

certification to the Small Business Administration. Comments regarding the general economic effects of the action are addressed in the comments and responses section of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, fishing, Gulf, Quotas, Recreational, Red snapper.

Dated: April 16, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.8, paragraphs (a) and (c) are revised to read

as follows:

§ 622.8 Quotas--general.

(a) Quotas apply for the fishing year for each species, species group, sector or component, unless accountability measures are implemented during the fishing year pursuant to the applicable annual catch limits and accountability measures sections of subparts B through V of this part due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**. Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species, sector or component from the previous fishing year for following fishing years, unless NMFS determines based upon the best scientific information available that maintaining the quota from the previous year is unnecessary. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ.

* * * * *

(c) *Reopening*. When a species, sector or component has been

closed based on a projection of the quota specified in this part, or the ACL specified in the applicable annual catch limits and accountability measures sections of subparts B through V of this part being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the species, sector or component to provide an opportunity for the quota or ACL to be harvested.

3. In § 622.39, paragraphs (a)(2)(i) and (c) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) *Recreational quota for red snapper--(A) Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined)--5.390 million lb (2.445 million kg), round weight.*

(B) *Federal charter vessel/headboat component quota--2,279,970 lb (1,034,177 kg), round weight. The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for*

Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(C) *Private angling component quota*--3,110,030 lb (1,410,686 kg), round weight. The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

* * * * *

(c) *Restrictions applicable after a recreational quota closure or recreational component quota closure.* The bag limit for the applicable species for the recreational sector or recreational sector component in or from the Gulf EEZ is zero. When the Federal charter vessel/headboat component is closed or the entire recreational sector is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef

fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

4. In § 622.41, paragraph (q) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) *Red snapper*--(1) *Commercial sector*. The IFQ program for red snapper in the Gulf of Mexico serves as the accountability measure for commercial red snapper. The commercial ACL for red snapper is equal to the commercial quota specified in § 622.39(a)(1)(i).

(2) *Recreational sector*. (i) The AA will determine the length of the red snapper recreational fishing season, or recreational fishing seasons for the Federal charter vessel/headboat and private angling components, based on when recreational landings are projected to reach the recreational ACT, or respective recreational component ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date(s) in the **Federal Register**. These seasons will serve as in-season accountability measures. On and after the effective date of the recreational closure or recreational component closure notifications, the bag and possession limit for red snapper or

for the respective component is zero. When the recreational sector or Federal charter vessel/headboat component is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the total recreational quota specified in § 622.39(a)(2)(i)(A), and red snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the total recreational quota by the amount of the quota overage in the prior fishing year, and reduce the applicable recreational component quota(s) specified in § 622.39(a)(2)(i)(B) and (C) and the applicable recreational component ACT(s) specified in paragraph (q)(2)(iii) of this section (based on the buffer between the total recreational ACT and the total recreational quota specified in the FMP), unless NMFS determines based upon the best scientific information available that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACL is equal to the total

recreational quota specified in § 622.39(b)(2)(i)(A). The total recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight. The recreational component ACTs for red snapper are 1.824 million lb (0.827 million kg), round weight, for the Federal charter vessel/headboat component and 2.488 million lb (1.129 million kg), round weight, for the private angling component. These recreational component ACTs are effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the total recreational ACT will apply to the recreational sector.

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